



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY, 21st Floor
NEW YORK, NY 10007-1866

VIA ELECTRONIC TRANSMISSION

John DiFazio, Vice President
Faztec Industries, Recycling and Materials
200 Bloomfield Avenue
Staten Island, New York 10314
johnd@difazioind.net and info@faztecind.com

Re: Faztec Notice of Potential Violations and Opportunity to Confer
August 11, 2020 EPA Reconnaissance Inspection at DCAS

Dear Mr. DiFazio:

This letter concerns the August 11, 2020, Reconnaissance Inspection that the U.S. Environmental Protection Agency, Region 2 ("EPA") conducted at the NYC Department of Citywide Administrative Services ("DCAS") property located east of Chelsea Road and south of Bloomfield Avenue on Staten Island, NY ("Site"). Faztec conducts operations on portions (mainly the southeast and eastern portions) of the DCAS site (the "Faztec Portion of the Site"). Please find a copy of EPA's inspection report attached as Exhibit 1.

The purpose of the inspection was to observe stormwater flow paths from the Faztec Portion of the Site to waters of the U.S. in order to determine the applicability of the New York State Department of Environmental Conservation ("NYSDEC") General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002 or previous permits) ("Construction General Permit," "CGP" or "Permit"). Construction activities that disturb one or more acres, or that are part of a larger common plan of development that is one acre or greater, require coverage under the Permit. Appendix A of the Permit defines a "larger common plan of development" as "a contiguous area where multiple separate and distinct construction activities are occurring, or will occur, under one plan..." Appendix A of the Permit also defines "construction activities" as any clearing, grading, excavation, filling, demolition, or stockpiling activities that result in soil disturbance. "Clearing activities" include cutting and skidding of trees, stump removal and/or brush root removal. See the following NYSDEC website for additional information: <https://www.dec.ny.gov/chemical/43133.html>. Aerial imagery contained in Exhibit 2, a Request for Information letter (CWA-IR-20-016 dated August 11, 2020), depicts more than one acre of construction activity, in the form of clearing vegetation and grading, and appears to have been conducted on the Faztec Portion of the Site as part of a larger common plan of development.

EPA identified likely flow paths from the Faztec Portion of the Site that flow across Chelsea Road along the gas pipeline right-of-way into Old Place Creek, a tributary of the Arthur Kill. In assessing Site hydrology, EPA reviewed and considered: (1) a 2010 Wetlands Inspection Report conducted on behalf of the NYC Economic Development Corporation that identified flow from the DCAS site that flows westward across Chelsea Road to estuarine wetlands, which flow to the Arthur Kill (See Exhibit 3 - 2010 Inspection Report); (2) a 2018 Wetlands Inspection conducted on behalf of Matrix that found



there are likely federal wetlands on the DCAS Site (See Exhibit 4 (2018 Inspection Report)); and (3) a letter dated October 23, 2020, from Buckeye Pipe Line Company L.P. that identifies construction activities conducted by DiFazio Industries in wet areas on the east and west side of Chelsea Road along the gas pipeline right of way; along with construction of a stormwater pipeline that drains water from east to the west side under Chelsea Road. (See Exhibit 5).

Section 301 of the Clean Water Act (“CWA”), 33 U.S.C. § 1311, prohibits the discharge of any pollutant from a point source to a water of the United States except, among other things, in compliance with an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Section 402(p) addresses discharges of stormwater from certain facilities, including discharges associated with industrial activity.

Based on EPA’s Investigation, we believe that Faztec has conducted construction activities on greater than one acre without obtaining coverage under NYSDEC SPDES Permit in Potential Violation of Section 301 of the CWA.

Opportunity to Confer

Information currently available to EPA suggests that Faztec may be in violation of the CWA. By this letter, EPA is extending to you an opportunity to advise the Agency, via telephone or other virtual telecommunications, or in writing, of any further information that EPA should consider with respect to the potential violations.

Under the CWA, the United States can unilaterally seek compliance and penalties to address violations through a civil action in federal district court, or through administrative actions that include penalty complaints and orders for compliance. However, as a courtesy, EPA is providing Faztec with the opportunity to demonstrate to EPA that Faztec was in compliance with the CWA at the time of inspection or to confer about a negotiated resolution for any violations. Thus, EPA is inviting Faztec to commence settlement discussions with EPA.

If Faztec is interested in resolving this matter prior to the filing of a complaint, as described above, Faztec must respond in writing within **twenty-one (21) calendar days** of receipt of this letter. EPA is willing to speak with representatives of Faztec to further discuss the potential violations, potential actions, potential penalties, and settlement. Any negotiated resolution will be subject to final approval by the Regional Administrator for EPA Region 2 or his designee.

Please note that to the extent that there are ongoing violations of the Permit at the Site, these violations should be corrected immediately if you have not already done so. EPA specifically reserves the right to use any and all enforcement tools at its disposal to address ongoing violations at the Site regardless of any ongoing discussions in response to this letter.

Please provide your written response **via email** and any questions and communications pertaining to the matters addressed in this letter to the attorney assigned to represent EPA:

Lauren Fischer, Assistant Regional Counsel
USEPA Region 2, 16th floor
290 Broadway, New York, NY 10007

Fischer.Lauren@epa.gov
(212) 637-3231

Should Faztec fail to provide information that would prove that the Site was in compliance at the time of inspection, or should Faztec and EPA fail to enter into a negotiated agreement in this matter, EPA reserves the right to unilaterally pursue an enforcement action to address the potential violations described in this letter without further advance notice to you.

If, in the course of discussing this matter with the Agency, you intend to submit documents or information to EPA, please be advised that you may assert a claim of business confidentiality covering any part or all of the information you submit to EPA in the manner described in 40 C.F.R. § 2.203(b). Information subject to a claim of business confidentiality will be made available to the public only in accordance with 40 C.F.R. Part 2, Subpart B. Unless a claim of business confidentiality is asserted at the time the information is submitted to EPA, EPA may make this information available to the public upon request without further notice to you.

You must also include as part of any submission of information or documentation to EPA relating to this matter the following certification signed and dated by a responsible corporate officer of your corporation:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this response to this Notice of Potential Violations and Opportunity to Confer and that, based on my inquiry of those individuals immediately responsible for obtaining or compiling the information, I believe that the submitted information is true, accurate, and complete. I recognize that there are significant penalties for submitting false and/or misleading information, including the possibility of fine and/or imprisonment.

Signature: _____
Printed Name: _____

This letter is not subject to review by the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520.

EPA has not determined whether Faztec is a “small business” under the Small Business Regulatory Enforcement and Fairness Act (“SBREFA”). Please see the Small Business Information Sheet attached as an enclosure. The enclosed sheet provides information on (1) contacting the SBREFA Ombudsman to comment on Federal enforcement and compliance activities and (2) compliance assistance. As noted in the enclosure, any decision to participate in such program or to seek compliance assistance does not relieve Faztec of its obligation to respond in a timely manner to an EPA information request or other enforcement action and does not create any new rights or defenses under law.

Sincerely,

Justine Modigliani, P.E., Chief
Clean Water Act Compliance Section

Enclosures

Exhibit 1 – Report from August 11, 2020 Reconnaissance Inspection

Exhibit 2 – Request for Information to Faztec CWA-IR-20-016

Exhibit 3 – AKRF 2010 Wetlands Inspection Report prepared for NYCEDC

Exhibit 4 – Langan - 2018 Wetlands Inspection Report prepared for Matrix

Exhibit 5 – Buckeye Pipeline 10/23/20 letter to EPA

SBREFA and Compliance Assistance Info

cc: Ed Hampston NYSDEC Albany
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Peter Sullivan, Esq. Counsel for Faztec ps@sullivanlegal.net
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